

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/281,674	03/30/1999	HERMANN BUJARD	BBI-013C3CN2CPA	7512
959	7590	10/28/2003	EXAMINER	
LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109			SHUKLA, RAM R	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/281,674	Applicant(s) BUJARD ET AL.	
	Examiner Ram R. Shukla	Art Unit 1632	

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2000 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 17 September 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-6, 9-14 and 17-19.

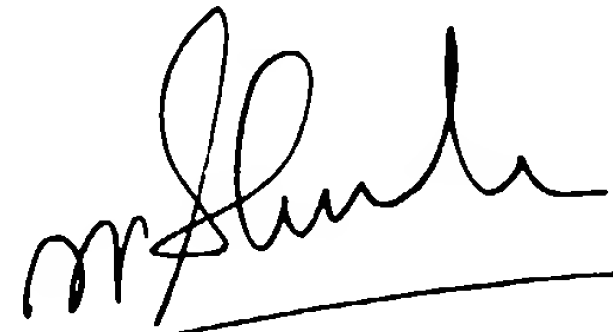
Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


RAM R. SHUKLA, PH.D.
PRIMARY EXAMINER

Ram R. Shukla, Ph.D.
Primary Examiner
Art Unit: 1632

Continuation of 5. does NOT place the application in condition for allowance because: Applicants have maintained their arguments that the claimed invention is enabled for the full scope. Applicants have reiterated their arguments from previous dates 2-27-02 and 2-21-03 and have argued that post filing arts show that the in vivo method comprising any route of administration and two nucleic acids not covalently linked for delivery of the genes are enabled and that the examiner has not provided any evidence as to how the successful in vivo studies can be termed direct. In response, applicants are advised to look at their response of 2-27-02 which summarized that the methods were direct administration. For example, Dhawan et al, Fishman et al were both indicated as methods of direct injection in muscles. Regarding the Regulier et al article, again the injection was direct into the striatum. Applicants have not provided any evidence to support their argument that the administration in these post filing arts was by any other route than direct. Accordingly, all the rejections are maintained for reasons of record set forth in the previous office actions of 5-23-00, 8-28-01, 10-21-02 and 5-16-03.



RAM P. SHUKLA, PH.D.
PRINCIPAL EXAMINER